

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CA06-1245

MAY 16, 2007

MARIA PATTERSON

APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F412064]

V.

WAL-MART ASSOCIATES, INC. and
CLAIMS MANAGEMENT
INSURANCE

APPELLEES

AFFIRMED

Appellant Maria Patterson appeals the June 29, 2006, decision of the Arkansas Workers' Compensation Commission (Commission) finding that she failed to prove entitlement to certain medical benefits and temporary-total-disability benefits beyond four days. She contends on appeal that the Commission erred in determining that her condition since November 2004 is not related to her June 24, 2004, compensable injuries. She further claims that the Commission erred in finding that she is not entitled to temporary-total-disability benefits after July 12, 2004. We affirm.

Appellant injured her left hip and left knee in a work accident on June 24, 2004. After medical care provided by Dr. Susan Gateley, who took appellant off work until July 12, 2004, appellant returned to work as a hauler for appellee Wal-Mart. Appellant worked from July

2004 until October 2004 on her regular shift, which was ten hours per day, four days per week. In November 2004, appellant sought medical treatment for pain in her left leg and hip. She testified that her leg, hip, and back hurt every year when the weather changes around the fall season. Wal-Mart sent her on November 8, 2004 to Dr. Roxanne Marshall, who concluded, after discussion with appellant regarding the June 24, 2004, incident, that appellant had strained her left knee and should be on light duty. On November 12, 2004, Dr. Marshall's notes indicate that appellant had a lumbar strain and left knee strain. Appellant was allowed to go back to work with the restriction of sitting duty only. On November 19, 2004, Dr. Marshall noted appellant had an lumbar strain with continued back pain radiating down to the left leg. Appellant was sent back to work with the restriction of sitting duty only, and Dr. Marshall sought permission from Wal-Mart to do an MRI scan of appellant's lumbar spine. The MRI was performed on November 29, 2004, and indicated disc desiccation at the L5-S6 level, abnormal signal in the posterior aspect of the L5-S1 disc consistent with an annular tear, and a bulging annulus at the L5-S1 level. The overall impression was that of a minimally bulging annulus with annular tear, L5-S1.

Dr. Roxanne Marshall referred appellant to Dr. Glenn E. Marshall, who noted on December 8, 2004, that the MRI scan showed a mild abnormality in her back with an L5-S1 bulging disc. He stated in his notes that he thought most of her pain was caused from a strain to her lumbar spine and from an acute bulge of the disc, as well as from injury to the left-femoral-lateral-cutaneous nerve. Appellant testified that Dr. Glenn Marshall requested that she remain off of work from December 8, 2004, until he released her in March 2005. However, appellant testified that when she tried to go back to work, Wal-Mart would not

allow it. She remained under Dr. Glenn Marshall's care until June 2005. She testified that even though she believes she needs further medical care, she has not been back to the doctor because she does not have the ability to pay for further medical treatment.

Appellant sought temporary-total-disability benefits from June 24, 2004, until July 12, 2004, and from December 3, 2004, until March 7, 2005. Wal-Mart contended that the appellant did not sustain a compensable injury. At the hearing, appellant testified that she did not remember she had had a problem with tendonitis in her shoulders and back in 1999, and that she failed to mention in her deposition her workers' compensation claims involving a box falling on her and another incident involving a forklift hitting her and causing her to fall. She admitted receiving a letter from Wal-Mart in February 2005 asking her to report to work as scheduled and stating that they would accommodate her restrictions. She testified that she did not report to work because she did not know when and where she was to report. Michael Minnier, personnel coordinator for Wal-Mart, testified that appellant is currently employed by Wal-Mart and that she is on a leave-of-absence. He explained that employees on leave-of-absence can apply for jobs that are posted. He further stated that appellant's work performance between July 2004 and December 2004 was very good, that she met all of her goals, and that her productivity exceeded expectations.

The Administrative Law Judge (ALJ), by an opinion filed November 21, 2005, determined that appellant proved by a preponderance of the evidence that she sustained a compensable injury to her back and left knee but that she failed to prove by a preponderance of the evidence that she sustained a compensable injury to her left hip. Further, the ALJ determined that appellant proved entitlement to four days of temporary-total disability, and

she failed to prove by a preponderance of the evidence that her symptoms and complaints after November 2004 were the result of her compensable injury of June 24, 2004. Both parties appealed to the Commission, and by an opinion filed June 29, 2006, the Commission affirmed and adopted the ALJ's decision. This appeal follows.

In appeals involving claims for workers' compensation, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirms the decision if it is supported by substantial evidence. See *Kimbell v. Ass'n of Rehab Indus. & Bus. Companion Prop. & Cas.*, 366 Ark. 297, __ S.W.3d __ (2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Dorris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, __ S.W.3d __ (2005).

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Patterson v. Ark. Dep't of Health*, 343 Ark. 255, 33 S.W.3d 151 (2000). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Id.* The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* The Commission has the authority to accept

or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony. *Arbaugh v. AG Processing, Inc.*, 360 Ark. 491, 202 S.W.3d. 519 (2005). As our law currently stands, the Commission hears workers' compensation claims de novo on the basis before the ALJ pursuant to Ark. Code Ann. § 11-9-704(c)(2), and this court has stated that we defer to the Commission's authority to disregard the testimony of any witness, even a claimant, as not credible. See *Bray v. Int'l Wire Group*, 95 Ark. App. 206, ___ S.W.3d ___ (2006).

Appellant argues in her first point on appeal that the Commission erred in determining that her condition since November 2004 is not related to her June 24, 2004, compensable injuries. She claims that the medical records do not indicate that her symptoms are inconsistent with her compensable injuries. She argues that it is reasonable to conclude that Dr. Glenn Marshall would not have opined that her condition was acute if there were any reasonable basis for asserting that her need for treatment was due to some condition that pre-existed the June 2004 accident. She contends that since she did not have medical treatment for her back with the season change in 2003, it is more likely that the June 2004 accident precipitated her need for medical treatment in the fall of 2004. She claims, therefore, that there is not substantial evidence to support the Commission's determination that her need for treatment after November 2004 was due to a pre-existing condition.

Appellees Wal-Mart and Claims Management Insurance argue that the evidence overwhelmingly indicates that appellant's back and knee pain in November 2004 and

thereafter was unrelated to any work incident. Appellees argue that appellant admitted to having pain in her legs, hip, and back every time the seasons change. They contend that she admitted to having been on at least ten health or injury-related leave-of-absences in her four years with Wal-Mart. Appellees point out that appellant exceeded expectations in her work productivity between July 2004 and December 2004. Finally, appellees claim that when appellant's attorney asked her on redirect examination if she had any medical treatment for her back in the year 2003, she replied, "my medication and stuff." Appellees contend that taking medication is medical treatment. We agree that the Commission had before it substantial evidence to determine that appellant's condition since November 2004 is not related to her compensable injury of June 24, 2004.

In her second point on appeal, appellant argues that the Commission erred in determining that she is not entitled to temporary-total-disability benefits after July 12, 2004. Because we hold that there was sufficient evidence before the Commission to find that appellant failed to show that her condition after her successful return to work on July 12, 2004, was related to her compensable June 24, 2004, injury, we do not address the appellant's second point on appeal.

Affirmed.

HART and ROBBINS, JJ., agree.